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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,943	10/31/2003	Gene Stauffer		5958
7590	01/27/2005		EXAMINER	
Law Office of Adam H. Jacobs Suite 726 1904 Farnam Street Omaha, NE 68102			GONZALEZ, MADELINE	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/700,943	STAUFFER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Madeline Gonzalez	2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 02 November 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2 and 5-9 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 5-8 is/are rejected.
- 7) Claim(s) 2 and 9 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 31 October 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

In response to applicant's amendment dated November 2, 2004

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1, 6 and 8 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Betz (U.S. 3,087,251) in view of Buck et al. (U.S. 2,022,756) [hereinafter Buck].

Betz discloses a linear measuring device, as shown in Fig. 1, having:

- a tape housing 10 having an outer surface, a tape outlet opening 14 and inner volume;
- a generally semi-flexible measuring tape 11 housed within said tape housing 10 in a generally spiral configuration with an outer end extendable through said tape outlet opening 14;
- a generally flat planar forward tongue 15 having inner and outer ends, said inner end of said forward tongue 15 hingedly/pivotably mounted on said outer end of said measuring tape 11 with said forward tongue 15 extending forwards therefrom, said forward tongue 15 being pivotable between a retracted position in general parallel alignment with and contacting said measuring tape 11 and an extended position extending outwards generally parallel with said measuring tape 11, said outer end of said forward tongue 15 being generally free of projecting objects mounted thereon whereby said outer end of said forward tongue 15 is operative to be extended into narrow openings;
- said forward tongue 15 is hingedly mounted on said outer end of said measuring tape 11; and
- said hinge connection of said forward tongue 15 including hinge stop means to restrict rotation of said forward tongue 15 beyond an extended position wherein said forward tongue 15 is generally parallel with said outer end of said measuring tape 11 for facilitating accurate measuring of inner measurement of objects to be measured.

Betz lacks a rear tail, at least two sets of measurements, and the rear tail being retractably mounted within the housing.

With respect to the rear tail, the at least two sets of measurements, and the rear tail being retractably mounted within the housing: Buck discloses a tape measure, as shown in Fig. 1, having an extendable flat planar rear tail 5 having an outer end and an inner end and a fixed length as measured between said outer end and said inner end, said rear tail 5 movably mounted on a tape housing 2 generally opposite a tape outlet opening 4, said rear tail 5 operative to project outwards from said tape housing 2; at least two sets of measurements displayed on a measuring tape 1, as shown in Fig. 2, an outer measurement of said at least two sets of measurements displaying the total extended distance of said measuring tape 1 from said outer end to said tape outlet opening 4, an inner measurement of said at least two sets of measurements displaying the total distance between said outer end of said rear tail 5 and an outer end of said tape 1 such that outer and inner measurements are simultaneously displayed on said measuring tape 1; wherein said inner end of said rear tail 5 is retractably mounted within said tape housing 2 with said outer end of said rear tail 5 extending partially outwards from said tape housing 2 when said rear tail 5 is housed within said tape housing 2 such that said outer end of said rear tail 5 may be engaged to withdraw said rear tail 5 from said tape housing 2 thereby moving said rear tail 5 into an extended position generally parallel with said outer end of said measuring tape 1 in the opposite direction therefrom. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add a retractable rear tail as taught by Buck to the tape measure disclosed by Betz in order to provide a better support when making inside measurements. Furthermore, it would have been obvious to provide two sets of measurements as taught by Buck to the tape disclosed by Betz in order to directly read inside and outside measurements including the length of the tail.

4. Claims 1, 5 and 7 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Betz (U.S. 3,087,251) in view of Mosman (U.S. 4,977,684) and Buck (U.S. 2,022,756).

Betz discloses a linear measuring device, as shown in Fig. 1, having:

- a tape housing 10 having an outer surface, a tape outlet opening 14 and inner volume;
- a generally semi-flexible measuring tape 11 housed within said tape housing 10 in a generally spiral configuration with an outer end extendable through said tape outlet opening 14;
- a generally flat planar forward tongue 15 having inner and outer ends, said inner end of said forward tongue 15 hingedly/pivotably mounted on said outer end of said measuring tape 11 with said forward tongue 15 extending forwards therefrom, said forward tongue 15 being pivotable between a retracted position in general parallel alignment with and contacting said measuring tape 11 and an extended position extending outwards generally parallel with said measuring tape 11, said outer end of said forward tongue 15 being generally free of projecting objects mounted thereon whereby said outer end of said forward tongue 15 is operative to be extended into narrow openings;
- said forward tongue 15 is hingedly mounted on said outer end of said measuring tape 11; and
- said hinge connection of said forward tongue 15 including hinge stop means to restrict rotation of said forward tongue 15 beyond an extended position wherein said

forward tongue 15 is generally parallel with said outer end of said measuring tape 11 for facilitating accurate measuring of inner measurement of objects to be measured.

Betz lacks a rear tail, at least two sets of measurements and the specific connection of the rear tail to the housing.

With respect to the rear tail and the specific connection of the rear tail to the housing: Mosman discloses a tape measure, as shown in Fig. 1, having a rear tail 16, wherein an inner end of said rear tail 16 is hingedly mounted on a tape housing 12 generally adjacent the lower surface of said tape housing 12, said rear tail 16 pivotable between a retracted position generally adjacent said tape housing 12 and an extended position generally parallel with an outer end of a measuring tape 14 in the opposite direction therefrom, said hinged connection including hinge stop means. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the tape measure disclosed by Betz with a rear tail as taught by Mosman in order to provide a better support when making inside measurements, specially when measuring recess dimensions.

With respect to the at least two sets of measurements: Buck discloses a tape measure, as shown in Fig. 1, having an extendable flat planar rear tail 5 having an outer end and an inner end and a fixed length as measured between said outer end and said inner end, said rear tail 5 movably mounted on a tape housing 2 generally opposite a tape outlet opening 4, said rear tail 5 operative to project outwards from said tape housing 2; at least two sets of measurements

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displayed on a measuring tape 1, as shown in Fig. 2, an outer measurement of said at least two sets of measurements displaying the total extended distance of said measuring tape 1 from said outer end to said tape outlet opening 4, an inner measurement of said at least two sets of measurements displaying the total distance between said outer end of said rear tail 5 and an outer end of said tape 1 such that outer and inner measurements are simultaneously displayed on said measuring tape 1. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide two sets of measurements as taught by Buck to the tape disclosed by Betz as modified by Mosman in order to directly read inside and outside measurements including the length of the tail.

***Allowable Subject Matter***

5. Claims 2 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

6. Applicant's arguments with respect to claims 1, 2 and 5-9 have been considered but are moot in view of the new ground(s) of rejection.

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7. In response to applicant's argument that the prior art does nor disclose or suggest the use of a projecting object free tongue as claimed by applicant: Betz teaches a tongue 15 having and outer end being generally free of projecting objects mounted thereon. The limitation "generally free of projecting objects mounted thereon" means that there can be at least one projecting object. Therefore, even though that the tongue 15 has a clip 13 projecting therefrom, it is "generally" free of projecting objects.

### *Conclusion*

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Madeline Gonzalez whose telephone number is (571) 272-2243. The examiner can normally be reached on Monday-Friday (8:00-5:30), alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MG



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